

HB 2661 Rule Advisory Committee
March 15, 2018 Minutes
9:05 am – 12:16 pm

Attendance:

Mike McCormick, Tim Beinert, Max Brown, Roberta Yambasu, Kelly Myrick-Duckett, Beth Jackson, Jamie Callahan, Liz Fischer, John Kaiser, Elisa Williams, Fred Steele, Cassie Bruske, Angela Allbee, D'Anna Lenford

On Phone: Gwen Dayton, George Adams, Bob Hoover, Kimberly Colkitt-Hallman, Meredith Williamson, Camille Cleveland, Patrick Shannon, and Tory Thompson

0905: Meeting was commenced at 500 Summer St, NE; Salem, OR Room 166

Minutes were reviewed and approved, Patrick Shannon was added to the February minutes as attending via telephone. No other corrections were made.

0909: Mike adjusted agenda as Elisa had a scheduling conflict. Communication plan was moved to follow the Final Rule Walkthrough – no objections

0909: Final Rule Walkthrough Review

411-058-0000 Definition (page 1)

(3) Compensation definition was changed to clarify \$1000 compensation cap and how it would come from one or more facilities and total \$1000.

(6) A comma that had been omitted was added between “wage” and “salary”

During this discussion it was asked if these rules applied to non-profits and it was answered that yes they did.

411-058-0010 (page 3)

(1) “A referral agents” was changed to “A referral agent”

(3) Wording was removed from sub section (3) and a new sub section (8) was created to clarify that agents that were in business to be referral agents had to register immediately and every two years, while someone that received gifts of over \$1000 in a single year had to register within 30 days of breaching that level. (8)

There was discussion on this point which followed the change in that the intent was that businesses would register immediately. This was to clarify not change the condition. It was further clarified after a question that agents did not have to wait until earning more than \$1000 to register.

411-058-0080

- (1) c. Wording of “and social media contact” was removed to read “electronic communication with clients”.

This section started several robust discussions. Points were made that anyone having access to client records and information should have background checks performed in the interest of protecting clients. A counter discussion was had that the words referral agent and client were already defined and “direct contact” was in question with the mention of other Oregon rules and statute that specified what direct contact is. The argument centered on that only referral agents that were providing referrals with direct contact to the client should be subject to the background check requirement.

Additional questions were raised based on differences in definition, if IT personnel that could access the records be subject to background checks or if a professional phone answering service employee would be subject to background checks.

Mike tabled this discussion until the agenda item on background checks was covered later.

- (4) Wording was changed to remove “within 14 days of being” and clarified to 14 days of having actual knowledge to report an arrest.

A robust discussion was had regarding the potential legal issues with taking employment action against an employee based on an arrest rather than a conviction. No additional actions were taken.

411-058-0090 Administrative Sanctions (page 8)

A discussion on terminology in regards to sanctions. It was discussed if the terminology should be “violation” or “non-compliance” and what rules/statutes supported each.

- (3) f. spelling mistake was corrected (page 9)

(5) Wording was added to define abuse of a client, as defined in OAR 411-020-0002 and 411-085-0005 (page 9)

- (1) “or for violating these rules” was added. (page 10)

A discussion followed, in regards to how \$5000 was determined as a penalty. This had been decided by consensus in the RAC meeting (February 15, 2018). A concern was brought up regarding consistency among other state programs and the rationale used to determine the fine level, and parity.

- (2) A grammatical change was made, replacing writing application with written application

10:00: Mike introduced Elisa Williams and gave her the lead in regards to the communication plan briefing

The Communication plan was briefed without significant discussion or objection. There were suggestions to add Home health and geriatric case managers to the primary audience.

The upcoming website was discussed as also being a place for a FAQ (Frequently Asked Questions) which would help create a narrative in regards to HB 2661. A question regarding the timeline was discussed that the website and FAQs would not be active until approval of the rules. DHS partnering with referral agencies was also discussed. It was mentioned that a meeting was coming up that may address some of this and if a partnership were to be made, how it would function. A comment was Oregon Senior Referral Agency (OSRAA) should have a voice in the communication plan.

10:26: Break

10:35: Reconvened

10:35: Kelly Myrick-Duckett provided a brief regarding changes to OAR 407-210-0210 (25) (8)(a), which added subsection (F) (page 5 of 39) “A referral agent or an employee of a long term care referral entity as required in OAR 411-058-0000 to 411-058-0100” which included these into the background check requirements.

A question was brought up in regards to if a long term referral agent could do their own background checks or contract out with a third party to avoid backlog delays through the DHS/BCU. After several comments and suggestions it was noted that not all contractors would have access to the information that DHS BCU would have, so we would not be considering other options, background checks would go through BCU. Additional staff was being added and a transition period would be allowed but checks would be done with an anticipated turnaround of less than two weeks. In the interim businesses would be allowed to continue business.

Additional discussion was brought up regarding supervision in organizations that the workers may not be in the same building. Kelly was going to look into this.

Kelly then discussed the Long Term Care Registry- in which long term care referral entities were allowed to be on this registry. They would renew every two years but if on the registry would not need an additional background if changing jobs. 407-007-0610 (8)(f) added “A long term care referral entity pursuant to OAR 411-058-000 to 411-058-0100

Mike affirmed that business could continue and the process would be expedited.

Mike moved the meeting forward, returning to the previous discussion on 411-058-0080, discussing employees and direct contact with clients.

There were two primary positions on this discussion. It was argued that only referral agents should have a background check, with referral agent being defined in the bill, only the term “direct contact” needing definition. Patrick Shannon noted that in multiple locations in Oregon statutes, having access to information and personal contact were differentiated and treated separately for DHS employees needing background checks. In HB 2661, the difference is not made, but should be used, as it is a published standard. There are other laws to prosecute others that may misuse information.

The other point was that anyone having access to information should go through the background check, and that the check itself was a deterrent to abuse and all such employees should be subject to the background check.

Questions were asked, would employees also include after hour answering services, assistants, or those that might handle a file and forward information to the referral agent when he/she was not in the office.

After a robust discussion, Mike tabled the issue by noting objections by Patrick Shannon and Camille Cleveland to the language and definitions in 411-058-0080 with particular emphasis to the wording “and any employee of a referral agent”, as well as section (1) (e) “Direct access to client-specific information, including but not restricted to a client’s medical, financial, long term care needs, and contact information”, on the grounds that is overly broad and does not agree with the language of the bill.

11:32: A question was brought up if the audio recording mentioned in 411-058-0030 (5) would be provided to the consumer. After a brief discussion it was decided that this was not a requirement and would not be added as an oral disclosure statement needed to be followed up in writing, and that a consumer could still request the audio recording from the referral agent, just that it would not be a requirement for the referral agent to proactively send the recording to every client they work with.

11:39: We discussed the draft application form. Several points were addressed on language and terminology as well as typographical errors. These were noted and the form returned to the work group for review. It was decided we were close enough that the work group would not meet again in person but should be able to finish up through email or phone calls if necessary.

11:50: We next discussed the draft Long Term Care Referral Agent Disclosure and Advisory Form.

Section 1 was discussed as being unworkable at this time. The language of the bill mandates disclosing the type of referrals not necessarily the name of facilities that the referral agent deals with. After discussion it was decided to change this section to cover types of facilities.

Section 2 was discussed as being confusing while mentioning lengths of contracts. During the discussion it was mentioned that this was a mandated disclosure but could be moved for ease of understanding. Recommended merging with section 4 “Limitation on referrals” as this also dealt with business contracts.

Section 6 was discussed to clarify that this was to list complaints against care facilities, not against referral agents. Many agreed this was a good idea, yet was not part of the bill.

This form was returned to the working group for additional work

12:05: Mike thanked everyone for their assistance and discussed not having any additional RAC meetings, instead, taking the input and moving to the rule making session. A short discussion

followed regarding processes for this type of meeting as well as testimony and written comments being accepted. There was no deadline or filing date at this time.

12:16: Meeting adjourned.